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September 14, 2020

Via email to lmahoney@wellesleyma.gov

Zoning Board of Appeals
Town of Wellesley
Town Hall
525 Washington Street
Wellesley, MA 02482

RE: Special Permit/Variance Petition – Canopy - 199 Worcester Street (Premises)

Greetings:

I represent Garabet K. Aharonian, Manager of 199 WORCESTER ST., LLC (Owner), the owner of the Premises. The Premises is used as a retail gasoline service station under the name Patriot Petroleum, an of right use under Zoning Bylaw (Bylaw) SECTION 11. BUSINESS DISTRICTS, A(8). As part of planned improvements to the Premises, which the Owner acquired approximately eighteen months ago, the attached Special Permit/Variance Petition is submitted pursuant to the provisions of Bylaw Sections 16A, 16G, 19, 24 and 25, seeking relief to allow the Owner to construct a canopy and appurtenant lighting over the gas pumps servicing the public in connection with an overall upgrade of the filling station, replacing the canopy that previously existed but was removed several years ago due to structural failures¹.

Contemporaneously with the filing of this Petition, the Owner has filed a Petition for a Special Permit with respect to a Standing Sign, signage on the proposed canopy, and updates to existing signage on the retail customer gas fueling pumps, which are to be replaced with new, more environmentally friendly and secure models of roughly equivalent size.

The Business District “neighborhood” in which the Premises is located consists of the subject filling station, a three (3) story office building at 195 Worcester Street, with a footprint of approximately 7,320 SF ², and a large appurtenant parking lot to the East on a 45,605 SF lot, another two (2) plus story commercial office building, also to the East, at 177 Worcester Street (which, although not a direct abutter, is directly visible from and directly across the parking lot serving 195 Worcester Street), with a roughly 4,200 SF footprint on a 14,641 SF lot. The Northerly lot line abuts the commercial lot, improved with two (2) office buildings, one two (2) stories and the other three (3) stories, at 118-120 Cedar Street, on an 11,600 SF lot. To the South the Premises directly abuts State Highway Route 9, and to the West, Route 9 and the off-ramp to Cedar Street, heading northerly.

¹ See Building Permit 26060 issued 3.4.92, authorizing construction of a 24’4” x 30’4” canopy, and Permit 2012-04658 with respect to its demolition.

² References to square footage of lots and building footprints are taken from the Town of Wellesley Assessor’s Property Record Cards.

The Design Review Board's *Design Guidelines Handbook* places the Premises in the "Worcester Street at Cedar Street" area of Town. The *Guidelines* state that the area is:

A mixed commercial center at the intersection of Worcester Street and Cedar Street contains a variety of uses including medical offices, automobile dealerships, and general office uses in a mix of building styles of various ages that appears to lack an overall definitive character. Most are oriented to Worcester Street traffic and although surrounded by residential uses, do not serve neighborhood shopping needs. The area is adjacent to the Rosemary Brook Town Forest.

The Premises itself is an irregularly shaped lot of 14,177 SF of land (per the Site Plan) and is improved with an existing building supporting the filling station operation, including offices, sales area, two service bays for the inspection and maintenance of motor vehicles, necessary underground storage tanks ("USTs," as located on the Canopy Plan), parking areas and two fuel dispensing pumps. The existing building complies with the 30' Front Yard Setback requirement of the Bylaw. It is noted that the concrete pad in the fuel service area encroaches into the Worcester Street right of way, which encroachment is to be removed as part of the proposed improvements.

The rear 10.5' of the Premises, along the Northerly lot line, is encumbered by a right of way reserved in the deed to the Owner (Right of Way), contributing further to the inability of the Owner to comply with various Bylaw provisions and requirements due to legal restrictions on the use of that area and the resulting adverse impact on the actual usable area of the Premises, both as to the "size" and "shape" of the lot.

An application for Design Review of the proposed canopy is simultaneously being submitted to the Design Review Board (DRB) for comment and approval as required by Bylaw Section 16A, Project Approval. Review and approval of the proposed canopy, a Minor Construction Project pursuant to Section 16A(C)(1), is required as it will result in a change in the outside appearance of the Premises visible from a public or private street or way and requiring a building permit. The proposed canopy does *not* contemplate construction, enlargement or alteration of a parking or storage area requiring a parking plan permit, and no removal or relocation of curbing, landscaping or traffic channelization island, driveway, storm drainage (recognizing that the canopy roof will collect and disburse rainwater as note below), lighting (other than within the canopy for safety and security purposes), or similar facilities is contemplated.

Accompanying this letter are electronic copies of the following:

- A plan entitled "Proposed Canopy Replacement, 199 Worcester Street, Wellesley, MA 02481," Sheet C-1.0, "Site Plan," prepared by CMG Environmental Services Engineering Services, and issued 05/14/2020, Revised 7.20.2020 (the "Canopy Plan");
- A plan entitled, "Proposed Canopy Replacement, 199 Worcester Street, Wellesley, MA 02481," Sheet FIG - 1.0, "Canopy Rendering," prepared by CMG Environmental Services Engineering Services, and issued "N/A (8/10/2020)," (the "Renderings");
- A plan entitled, "Plot Plan at 199 Worcester Road [sic] in Wellesley, Mass.," prepared by Neponset Valley Survey Assoc., Inc, and dated August 14, 2020 (originally dated April 29, 2020) showing the Premises (the "Site Plan");
- A portion of Town Plan 15 showing Parcel 17, the Premises, and the Right of Way;
- A copy of a portion of the Town of Wellesley Zoning Map identifying the limit of the Water Supply Protection District (solid blue line running along the edge of the Premises

and the exit ramp from Route 9 to Cedar Street) abutting, *but not including*, the Premises, shown in red, which is immediately outside of the WSPD;

- An aerial view of the Premises (the “Aerial Photo”);
- Photographs of the Premises, including views looking Northerly from Worcester Street and Westerly and Easterly around the Premises;
- A black and white photo of the previous canopy;
- Copies of Building Permit 26060 issued 3.4.92, authorizing construction of a 24’4” x 30’4” canopy, and Permit 2012-04658 with respect to its demolition;
- Photographs, at unrelated locations, of canopies by the manufacturer of the proposed structure that are similar in design to that proposed herein;
- A Lighting Plan (photometric plan) consistent with Bylaw Section 16G, Outdoor Lighting, (E)(3), dated August 11, 2020, Revised September 4, 2020, entitled, “Lighting Proposal LO 151953-3, Canopy,” prepared by LSI Industries Inc.; (the “Lighting Plan”);
- The luminaire manufacturer’s specification data containing required information pursuant to Bylaw Section 16G (E)(2) (the “Lighting Specs”);
- A so-called “cut sheet” of the proposed dispensers that will replace the existing, antiquated, models currently on site;
- Photos of the existing gasoline dispensers;
- The Permit Set Sign design and photos prepared by Sunshine Sign showing all newly proposed signage, previously approved by the DRB, and includes various site photos of existing conditions (“Signage Plans”);
- A copy of a May 5, 2020 Recommendation Letter from the Town of Wellesley Design Review Board in DRB-20-15S (The “DRB Approval Letter”) unanimously approving the Signage Plans;
- A copy of the Decision in ZBA 88-57 granting a Special Permit allowing construction of the original internally illuminated standing sign; and
- A copy of the Decision in ZBA 2011-44 granting a Special Permit allowing renovation of existing signage and the addition of further signage.

Reference is made to materials submitted with a Petition filed simultaneously for a Special Permit with respect to replacement of existing signage on the site and signage on the proposed canopy, which materials are, to the extent necessary and advisable, incorporated herein by reference.

DESCRIPTION OF PROJECT

This Petition for a Special Permit/Variance is for the construction of a new 23’ 6” wide x 40’ long x 18’ high canopy and appurtenant lighting in the area over the existing pump island as shown on the Canopy Plan, the Renderings, and the Lighting Plan. The canopy will cover the concrete pad that is the base of the refueling area, and be set back 6” from the lot line. As can be seen on the Canopy Plan and in the Aerial Photo, the lot line of the Premises, at the end of the easterly entrance drive to the fueling area, is set back 13.5’ from the granite curb that separates the paved roadway from the “sidewalk” and “tree lawn,” and is 12.7’ from the same curb at the westerly exit drive. In addition, the Aerial Photo indicates that at the easterly entrance driveway the curb is approximately 12’ distant from the solid white lane line demarcating the “breakdown” lane or road shoulder from the west-bound travel lane and approximately 2.5’ distant from that solid white lane line at the westerly exit drive. The canopy will thus be set back roughly 28’ from the travel lane at the easterly side of the canopy and 15-16’ therefrom at the westerly exit drive. A view of the layout of the Route 9 right of way in front of the Premises, as described above, indicates that the canopy,

with 15' clearance above grade, will not present any sight-line issues for traffic proceeding westward nor for those vehicles exiting Route 9 via the Cedar Street North exit ramp.

The proposed canopy, as described in the Specs and as shown on the Renderings, will sit on two (2) concrete footings reinforced with rebar. Two central 8 x 8 tube steel canopy columns (uprights), spaced 13'6" apart, with a steel white finish will support the roof. I-beams sit horizontally across the uprights with sheet metal decking on top. The canopy will have internal water collectors, directing roof runoff down the inside of the columns, dispersing onto the ground in the vicinity of the column footings. The fascia material is to be white Aluminum Composite Material (ACM), which is lightweight and, according to the manufacturer, consists of two aluminum cover sheets and a fire rated core which provides, "a weather resistant, unbreakable and shock resistant façade." The white colored finish to which the requested signage will be affixed has, per the manufacturer, excellent corrosion resistance, is maintenance free for up to thirty years, is highly resistant to UV light, and is abrasion and impact resistant, so should maintain an attractive look for an extended period of time.

As mentioned, the new Owner seeks to upgrade and modernize the facility to create, within the restricted confines of the lot and the pre-existing structures and improvements, an attractive and suitably functional filling station to Wellesley standards. Thus, in addition to the canopy and new signage, the Owner intends to replace the existing, outdated and archaic gasoline dispensers with more modern, state of the art models which will further enhance both the safety and security of the site and its environs, as well as the overall aesthetic impact of the Premises, which sits at the crest of the hill at the Easterly gateway to the Town. For informational purposes, cut sheets showing the proposed dispensers are filed with this Petition.

The project does NOT contemplate or result in removal or relocation of existing driveways, curb cuts, curbing, landscaping or the existing traffic channelization island.

Lighting, directed downward from the underside of the canopy, will be provided by six (6) LED downward directed lights designed, to the extent possible due to the limitations of the Premises described herein, to prevent off-site spillage to the maximum extent possible while maintaining safety requirements, recognizing that the canopy will be installed close to the lot line of the Premises. The Lighting Plan and Lighting Specs provide additional details, and off-site impacts, as described in more detail below, are *de minimis*.

As the station will be full-service, with gas pumped by employees and not customers, the Owner states that a fire suppression system is not required.

RELIEF REQUESTED

Bylaw Section 19 requires a 30' Front Yard setback for structures in the applicable Business District. As described above, only 6" is available for setback purposes. Since the entire frontage of the Premises on the Southerly and the rounded Westerly sidelines abuts roadways, compliance with the Bylaw's Front Yard setback requirements would require demolition and relocation of the existing building, USTs and existing fuel dispensing stations, and even then, full compliance with the Bylaw requirements would be a virtual impossibility given the shape of the lot and would, at best, involve substantial hardship, financial or otherwise, to the Owner and represent an impossibly challenging and detrimental situation.

Due to the size and irregular shape of the lot, which are unique in the Zoning District, as well as the existing Right of Way and structures, there is no other location on the Premises where the canopy could be constructed where it would serve any useful purpose.

It is asserted that owing to circumstances, that have *not* been self-created, relating to the condition of the Premises, its shape, or the topography of such land or structures thereon, which conditions especially affect the Premises but do not generally affect the zoning district in which the Premises is located, literal enforcement of the provisions of the Bylaw will involve substantial hardship, financial or otherwise, to the Owner.

In addition, the requested relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw, and the proposed improvements are in harmony therewith and with the neighborhood.

The proposed canopy is otherwise of a scale reasonable for the location and in scale with and respective of the relationship to the commercial office buildings in the area, protects necessary sight lines and viewer distances as they relate to travel speeds along Worcester Street and the abutting exit ramp, and are consistent in size and design with other similar structures in Town, most importantly, those along the Route 9 corridor, and is in reasonable continuity therewith. The proposed size, shape, and placement of the canopy serve to define and enhance the filling station operation and will not unreasonably interrupt or obscure existing features, either on or off site.

With respect to the proposed under-canopy lighting, which is necessary for and promotes public safety, it is noted that due to the edge of the canopy being located 6" from the lot line full compliance with the light trespass limits specified in the Bylaw's Outdoor Lighting requirements, Section 16G, is virtually, if not in fact, impossible. The canopy designer and lighting company have worked long and hard to bring the necessary lighting into compliance with the Bylaw, and their efforts have reduced spillage considerably, although preventing *any* spillage whatsoever onto Route 9 presents an insurmountable challenge. That said, it is asserted that the limited spillage of lighting, described below, from the canopy at the intersection of Route 9 and the Cedar Street exit ramp, along the South of the Premises and the Western corner rounding of the Premises, will actually have a public benefit.

Canopy lighting will be provided by six (6) flush mounted LSI CRUS-SC-LED-VLW-30 lighting fixtures, each a Fully Shielded Luminaire as described in Bylaw Section 16G(D). These very low watt (VLW) LED fixtures will be flush mounted on the underside of the canopy deck and are "Acceptable" fixtures in accordance with Figure 2 of Section 16G(F)(1). The average footcandle level (Fc) on the ground beneath the canopy will be 20.61 Fc, with a maximum of 29.7 Fc and minimum of 11.4 Fc.

The footcandle levels at the property lines will be: West 0.1 Fc, North 0.0 Fc, East 0.0 Fc, and South 20.4 Fc (within one foot of the canopy edge). The footcandle level in Worcester Street, directly in front of the canopy, will vary from a maximum of 3.7 Fc at the curb line to 0.1 FC approximately at the median. Although the Maximum Illuminance limitation of 10/100 as required by TABLE 16G.1, LIGHTING LEVELS AND LIGHT TRESPASS LIMITATIONS, is exceeded, at 29.7 Fc it is well below that allowed for Outdoor Recreation and Sports Facilities yet is reasonable for a filling station. The Maximum Light Trespass of 1.0/10 allowed by TABLE 16G. is exceeded at the exact southerly lot line (21.5 where the proposed canopy is 6" from the lot line), the light trespass attenuates rapidly to a mere 1 Fc at fourteen feet from the curb line of Route 9. Although approximately 770 SF of Worcester Street will experience Fc levels exceeding 1Fc, it is noted that the canopy will thus be set back approximately 28' from the edge of travel lane at the easterly side of the canopy, and 15-16' therefrom at the westerly exit drive.

The correlated color temperature ("CCT") of any individual lamp shall not exceed 3,000K as required by Bylaw Section 16G(F)(2).

It is noted that the only direct abutters to the Premises are the state highway and other roadways to the South and West, and office buildings to the North and East. The building closest to the proposed canopy,

and its appurtenant lighting, is the commercial office building at 120 Cedar Street, which sits behind the existing building on the Premises and is thus shielded, in part, from light spillage. The two structures – 120 Cedar and the canopy, are roughly 92’ apart. Also, behind the service building on the Premises is another office building, 118 Cedar Street. This building, also partially shielded from the canopy by the building on the Premises, is approximately 138’ distant from the canopy’s center. The direct abutter to the East, the David Nassif Office Park at 177 and 195 Worcester Street, is comprised of 2 office buildings. The area at 195 Worcester Street which is actually directly adjacent to the Premises consists solely of an asphalt parking area, the building at 195 Worcester Street being set back about 165’ from Route 9, and roughly 152’ from the center of the proposed canopy. Likewise, the office building at 177 Worcester Street is separated from the proposed canopy by over 220’, all of which is asphalt parking area.

The proposed canopy lights will have less light spillage than the pole lights currently at the perimeters of the Premises, as well as the street lights in the vicinity.

In order for the Board to issue a Special Permit for the non-compliant under-canopy safety lighting in accordance with Section 16G, a finding must be made that that one or more of the following conditions are met:

- a. The proposed lighting is necessary to enhance public safety; or
- b. The proposed lighting enhances, or does not negatively impact, community ambiance and character; or
- c. The proposed lighting does not produce unacceptable light trespass, glare, sky glow, or compromise the privacy of abutting property owners.

It is asserted that the proposed exterior lighting, although not exactly meeting the standards with respect to allowable illuminance levels or light trespass limits as specified in Table 16G.1, is required to ensure the safety of the public, does not, as described above, adversely impact the character or ambiance of the surrounding area, nor unnecessarily exceed threshold limitations, nor interfere with the abutting properties.

Further, the proposed lighting fulfills the stated purposes of Section 16G in that they will, “enhance public safety by providing for adequate and appropriate outdoor lighting, protect community character, promote energy conservation, protect against light trespass and glare, protect the privacy of residents, and minimize sky glow.” [Bylaw, Section 16G(B)]

The height, proportions and materials, illumination proposed for the canopy, as well as the lighting described above, are reasonably compatible with Business District and the commercial neighborhood context. The size, location, design and illumination will not present a safety hazard to vehicular or pedestrian traffic and will actually enhance the safety of persons on or about the Premises.

As mentioned, on the Premises there previously existed a canopy similar in size and design, which was prudently removed due to its deteriorating condition as the prior owners apparently let the service station go into disrepair. The Owner, seeking to upgrade and modernize the facility, seeks to create, within the confines of the lot and the pre-existing structures and improvements, an attractive and suitably functional filling station to Wellesley standards.

The proposed canopy and its appurtenant lighting (and signage) have been created so as to conform as closely as possible to the Bylaw and minimize any variances from the limitations of relevant Sections of the Bylaw and minimize the need for Special Permits. Alas, due to site conditions specific to the Premises and not present generally in the District, full compliance with the Bylaw is an impossibility, resulting in

this request for relief. It is asserted that the site size and the shape of the lot, the existing conditions, and the nature of the business operations combine to allow the Board to comply with the letter and the spirit of the Bylaw and grant the requested relief.

As noted above, it is asserted that the Board may grant the requested relief without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Wellesley Zoning Bylaw. In addition, literal enforcement of the provisions of the By-law would involve substantial hardship, financial or otherwise, to the Owner.

Further, the relief requested by way of Special Permit will not be substantially more detrimental to the neighborhood than existing non-conformities, nor otherwise be detrimental to the neighborhood, nor will the granting of such relief derogate from the intent and purpose of the Bylaw, and will be consistent therewith.

Pursuant to instructions received, the filing fee of \$525.00 (check #1550), covering both the Special Permit and Variance requests described herein and the Special Permit for signage, filed simultaneously herewith, has previously been delivered to the ZBA office. We look forward to meeting virtually.

The Owner respectfully asks the Board for the requested relief. Thank you for your consideration.

Very truly yours,
199 WORCESTER ST., LLC
By its attorney:

Stanley A. Brooks

SAB/h

Attachments

cc: Gary Aharonian (via email; with attachments)

Carol Richards, Town of Wellesley ZBA (via email; with attachments to crichards@wellesleyma.gov)

Mark Smith (via email; with attachments)